

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: FRANCHISE SERVICES OF NORTH AMERICA, INC. CASE NO. 17-02316-EE**

**DEBTOR**

## CHAPTER 11

**UNITED STATES RESPONSE TO MOTION OF DEBTOR FOR PRELIMINARY AND FINAL ORDER (I) AUTHORIZING POST-PETITION FINANCING ON A SECURED AND SUPER-PRIORITY BASIS PURSUANT TO 11 U.S.C. §§ 105(a), 364(c)(1), 364(c)(2), 364(c)(3) AND 507(b); (II) GRANTING OTHER RELATED RELIEF; AND SCHEDULING A FINAL HEARING PURSUANT TO RULE 4001(c)(2) AND PURSUANT TO MISS BANKR. L.R. 5005-1 AND MISS. BANKR. L.R. 9013-1**

Comes now Henry G. Hobbs, Jr., Acting United States Trustee for Region 5, by and through undersigned counsel, and files his response to Motion of Debtor for Preliminary and Final Order (I) Authorizing Post-Petition Financing on a Secured and Super-Priority Basis Pursuant to 11 U.S.C. §§ 105, 364(c)(1), 364(c)(2), 364(c)(3) and 507(b); (II) Granting Other Relief; and (III) Scheduling a Final Hearing Pursuant to Rule 4001(c)(2) and pursuant to Miss. Bankr. L. R. 5005-1 and Miss. Bankr. L. R. 9013-1 (Dkt. # 10) and in support thereof will show unto the court as follows, to-wit:

1. As noted in the debtor's motion, the debtor seeks immediate relief authorizing post-petition financing in the amount of \$100,000.00 and then, after notice and a final hearing, a final order authorizing post-petition financing in the amount of \$250,000.00, subject to a possible subsequent funding, at the discretion of the DIP Lender of an additional \$250,000.00.

2. The DIP lender is Trace Residential Properties, LLC, a limited liability company of which Thomas P. McDonnell, III, the Chief Executive Officer of the Debtor, is the managing member. McDonnell is also the chairman of the board of directors and the owner of

approximately 35.9 % of the debtor's outstanding common stock. Additionally, McDonnell will serve as the stalking horse bidder for the debtor's assets.

3. In light of this relationship the debtor's motion should subject to heightened scrutiny.

4. While McDonnell's declaration indicates he will step aside as President and Chairman of the Board during the case, it is unclear whether McDonnell will remain on the board. If McDonnell remains on the board without any qualifications or conditions, questions will arise as to whether the board is truly independent and how the board will function.

5. It is unclear whether the lender seeks a lien on chapter 5 avoidance actions.

WHEREFORE, the United States Trustee prays that his response be received and filed and that the court grant such relief as deemed necessary and appropriate under the circumstances.

The United States Trustee further prays for all general and equitable relief to which entitled.

Respectfully submitted,

Henry G. Hobbs, Jr.  
Acting United States Trustee  
Region 5, Judicial Districts of  
Louisiana and Mississippi

By: /s/ Ronald H. McAlpin  
Ronald H. McAlpin

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**CERTIFICATE OF SERVICE**

I, Ronald H. McAlpin, Assistant U. S. Trustee, do hereby certify that a copy of the foregoing pleading has been served this day on the below named individual(s) via first class U. S. Mail at the address listed below or by the Notice of Electronic Filing via the email address on file with the Court's CM/ECF system:

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Date: June 28, 2016

/s/ Ronald H. McAlpin  
Ronald H. McAlpin  
Assistant U. S. Trustee